IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
(MARTINSBURG DIVISION)

ELECTRONICALLY FILED
Dec 09 2016
U.S. DISTRICT COURT
Northern District of WV

DALB, INC.,

a West Virginia corporation,
Plaintiff,

v.

NATIONAL BEVERAGE SCREEN PRINTERS, INC.,

a Florida corporation,
Defendant.

Civil Action No. 3:16-cv-167 (Groh)

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

DALB, Inc., by and through its counsel Davidson, Berquist, Jackson & Gowdey LLP and Bowles Rice LLP, hereby file this Complaint for Patent Infringement against National Beverage Screen Printers, Inc. as follows:

THE PARTIES

1. DALB, Inc. ("Plaintiff" or "DALB"), is a corporation organized and existing under the laws of the State of West Virginia, having its principal office at 73 Industrial Boulevard, Kearneysville, Jefferson County, West Virginia 25430.

2. National Beverage Screen Printers, Inc. ("Defendant" or "NBS") is a company organized and existing under the laws of the State of Florida, having its principal office at 12000 Main Street, Williston, South Carolina 29853.

JURISDICTION AND VENUE

3. Plaintiff's Complaint is for patent infringement arising under the patent statutes, 35 U.S.C. § 101 *et seq.*, in particular 35 U.S.C. § 271.

4. This Court has subject matter jurisdiction over Plaintiff's claims under 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over NBS at least because NBS has purposefully availed itself of jurisdiction in this state and judicial district by voluntarily and purposefully committing and continuing to commit acts of infringement in this state and judicial district. Upon information and belief, the defendant sells and offers to sell products at issue in this action in the district and the State, directly, indirectly and through intermediaries and/or agents and Defendant has established a distribution network and placed products at issue in this action into the stream of commerce, using the distribution network, with the expectation and knowledge that some of those products would be sold in this judicial district and in this State.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and 1400(b) at least because infringing acts have occurred and are occurring in this judicial district.

BACKGROUND FACTS

7. On May 27, 2008, United States Patent No. 7,377,065 ("the '065 patent") was duly, properly, and legally issued and assigned to DALB. The '065 patent is valid and in full force and effect and products produced under the claims of that patent have enjoyed substantial commercial success and recognition in the trade. A copy of the '065 patent is attached hereto at Tab A.

8. On January 31, 2012, United States Patent No. 8,104,206 (“the '206 patent”) was duly, properly, and legally issued and assigned to DALB. The '206 patent is valid and in full force and effect and products produced under the claims of that patent have enjoyed substantial commercial success and recognition in the trade. A copy of the ‘206 patent is attached hereto at Tab B.

9. Plaintiff DALB makes and sells products for use in the beverage dispensing industry, including a signage retrofit kit for a vending machine that includes a sign that attaches to the front surface of a vending machine. The sign includes multiple product display windows for displaying the products available for purchase within the vending machine and also a back side on which product identifier holders are positioned behind the display windows. DALB also makes and sells product identifiers that can be inserted into the product identifier holders so as to be visible through the product display windows of the sign. DALB also makes and/or has made and sells electrical switches that can be attached to the sign in a manner that allows a vending machine consumer to use the product identifiers to make a purchase selection, the electrical switches being designed to operatively connect with the control circuitry of the vending machine so as to trigger the desired vend operation. DALB sells those signage retrofit kits and associated product identifiers and electrical switches nationwide.

10. Defendant NBS offered, and continues to offer and sells, signage retrofit kits, product identifiers, and electrical switches adapted to interface with the control circuitry of a vending machine that include each of the features found in DALB’s corresponding products. NBS sells those products to at least one or more Coca-Cola bottlers, including a Coca-Cola bottler responsible for distribution of vending machines within West Virginia.

11. Defendant NBS sells its vending machine signage kits in direct competition with the vending machine signage kits sold by Plaintiff DALB.

COUNT I – PATENT INFRINGEMENT (‘065 PATENT)

12. DALB repeats the allegations of ¶¶ 1-11 of its Complaint as if set forth at length herein.

13. Defendant NBS has known of the ‘065 patent since at least July 8, 2015.

14. Defendant NBS has been, and is, making, having made, offering for sale, selling, using and/or importing signage retrofit kits, which kits include replacement signage for modifying the front of vending machines, product display windows and the associated product identifier holders, product identifiers, and electrical switches especially configured to interface its signage retrofit kits with the control circuitry of a vending machine which infringe one or more claims of the '065 patent, including at least claims 1, 3 and 5 of that patent.

15. NBS makes and sells retrofit signage for attachment to the front of a vending machine, as represented for example by a product number “S1020551,” which signage product includes a series of eight large, vertically oriented display windows, one example of which shows two horizontal rows of four windows each that are in excess of 6 inches in height and 3 inches in width.

16. The eight large NBS display windows are centrally positioned in the upper half of the vending machine’s front at a location spaced apart from the location where a product selection panel is placed in a conventional vending machine as recited by claims 1, 3 and 5 of the ‘065 patent.

17. The signage product made and sold by NBS further includes a back face on which product identifier holders, constructed to hold product identifiers as recited by claims 1, 3 and 5

of the ‘065 patent, are mounted, one such holder is provided for at least one of the NBS display windows.

18. NBS makes and sells product identifiers constructed and sized to fit the display windows and adapted to be inserted into product identifier holders of the retrofit signage products made and sold by NBS as recited by claims 1, 3 and 5 of the ‘065 patent and claim 1 of the ‘206 patent.

19. NBS makes electrical switches, and/or has made electrical switches for it, and sells those electrical switches; the NBS electrical switches are configured to mount to the NBS retrofit signage products and to operatively connect to the vend control circuitry of a vending machine as recited by claim 5 of the ‘065 patent.

20. NBS knowingly aids and abets vending customers purchasing its retrofit signage kits, product identifiers and electrical switches by making each of those products, none of which are known to have any use other purpose other than forming part of the signage of a vending machine, and constructing them so as to be interoperable with one another and specially adapted for use with a signage retrofit kit for vending machines.

21. The components of the vending machine retrofit signage kit made and sold by NBS are each a material part of the retrofit kit claimed by the ‘065 patent and none of those products are a staple article or commodity of commerce suitable for substantial non-infringing use, but have been specially made or specially adapted for use as a retrofit signage kit for vending machines.

22. NBS’s infringement of claims 1, 3 and 5 of the ‘065 patent has been willful, wanton, egregious, and with total disregard for DALB’s rights, and will continue unabated unless

enjoined by this Court. NBS's infringement of these claims of the '065 patent is, and has been, direct, indirect, literal, by equivalents, through inducement, and/or by contributing to the direct infringement thereof by others.

COUNT II – PATENT INFRINGEMENT ('206 PATENT)

23. DALB repeats the allegations of ¶¶ 1-11 of its Complaint as if set forth at length herein.

24. Defendant NBS has known of the '206 patent since at least July 8, 2015.

25. Defendant NBS has been, and is, making, having made, offering for sale, selling, using and/or importing signage retrofit kits, which kits include replacement signage for modifying the front of vending machines, product display windows and the associated product identifier holders, product identifiers, and electrical switches especially adapted to interface its signage retrofit kits with the control circuitry of a vending machine which infringe one or more claims of the '206 patent, including at least claim 1 of that patent.

26. NBS makes and sells retrofit signage for attachment to the front of a vending machine, as represented for example by a product number "S1020551," which signage product includes a series of eight large, vertically oriented display windows, one example of which shows two horizontal rows of four windows each that are in excess of 6 inches in height and 3 inches in width.

27. The eight large NBS display windows are centrally positioned in the upper half of the vending machine's front at a location spaced apart from the location where a product selection panel is placed in a conventional vending machine as recited by claim 1 of the '206 patent.

28. The signage product made and sold by NBS further includes a back face on which product identifier holders, constructed to hold product identifiers, are mounted, as recited by claim 1 of the '206 patent one such holder is provided for at least one of the NBS display windows.

29. NBS makes and sells product identifiers constructed and sized to fit the display windows and to be inserted as recited by claim 1 of the '206 patent into product identifier holders of the retrofit signage products made and sold by NBS.

30. NBS makes electrical switches, and/or has made electrical switches for it, and sells those electrical switches; the NBS electrical switches are configured to mount to the NBS signage products and to operatively connect to the vend control circuitry of a vending machine as recited by claim 1 of the '206 patent.

31. NBS knowingly aids and abets vending customers purchasing its retrofit signage kits, product identifiers and electrical switches by making each of those products, none of which are known to have any useful purpose other than forming part of the signage of a vending machine, and constructing them so as to be interoperable with one another and specially adapted for use with a signage retrofit kit for vending machines.

32. The components of the vending machine retrofit signage kit made and sold by NBS are each a material part of the retrofit signage kit claimed by the '206 patent and none of those products are a staple article or commodity of commerce suitable for substantial non-infringing use, but have been specially made or specially adapted for use as a retrofit signage kit for vending machines.

33. NBS's infringement of the patent claims of the '206 patent has been willful, wanton, egregious, and with total disregard for DALB's rights, and will continue unabated unless

enjoined by this Court. NBS's infringement of this claim of the '206 patent is, and has been, direct, indirect, literal, by equivalents, through inducement, and/or by contributing to the direct infringement thereof by others.

WHEREFORE Plaintiff DALB demands:

(a) An injunction against the defendant NBS, Inc. enjoining it, its employees, agents, attorneys, and privies, and all those in active concert or participation therewith, from the continued infringement of the '065 and '206 patents, pursuant to 35 U.S.C. § 283;

(b) An accounting, assessment and award of damages, not less than a reasonable royalty, and including prejudgment interest, adequate to fully compensate DALB for the infringement of the patents complained of herein, together with interest and costs as affixed by the Court, pursuant to 35 U.S.C. § 284;

(c) That any damage awarded pursuant to 35 U.S.C. § 284 be increased up to three times, as provided by 35 U.S.C. § 284, in view of defendants' willful infringement of the '065 and '206 patents;

(d) A finding that this is an exceptional case and an award to DALB of reasonable attorneys' fees due to the exceptional nature of this case, pursuant to 35 U.S.C. § 285;

(e) An award to DALB of costs incurred in prosecuting this matter; and

(f) Such other and further relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and the 7th Amendment to the Constitution of the United States, DALB demands a trial by jury of all issues triable as of right by jury in the above action.

Date: December 9, 2016

DALB, INC.

by its Attorneys

/s/ Charles F. Printz, Jr.
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